

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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Justin Lynn Victory,

Plaintiff,

v.

Bank of America, et al.,

Defendants.

Case No. 2:24-cv-00978-JAD-DJA

Order

Under 28 U.S.C. § 1915 Plaintiff is proceeding in this action *pro se* and has requested authority to proceed *in forma pauperis*. (ECF No. 15). Plaintiff also submitted a complaint. (ECF No. 1). Because the Court finds that Plaintiff's application is complete, it grants the application to proceed *in forma pauperis*. However, because the Court finds that Plaintiff's complaint does not allege a claim upon which relief can be granted, it dismisses the complaint with leave to amend.

I. *In forma pauperis* application.

Plaintiff filed the affidavit required by § 1915(a). (ECF No. 15). Plaintiff has shown an inability to prepay fees and costs or give security for them. Accordingly, the request to proceed *in forma pauperis* will be granted under 28 U.S.C. § 1915(a). The Court will now review Plaintiff's complaint.

II. Legal standard for screening.

Upon granting an application to proceed *in forma pauperis*, courts additionally screen the complaint under § 1915(e). Federal courts are given the authority to dismiss a case if the action is legally "frivolous or malicious," fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). When a court dismisses a complaint under § 1915, the plaintiff should be given leave to amend the complaint with directions as to curing its deficiencies, unless it is clear from the face of the

1 complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70
2 F.3d 1103, 1106 (9th Cir. 1995).

3 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a
4 complaint for failure to state a claim upon which relief can be granted. Review under Rule
5 12(b)(6) is essentially a ruling on a question of law. *See Chappel v. Lab. Corp. of Am.*, 232 F.3d
6 719, 723 (9th Cir. 2000). A properly pled complaint must provide a short and plain statement of
7 the claim showing that the pleader is entitled to relief. Fed. R. Civ. P. 8(a)(2); *Bell Atlantic Corp.*
8 *v. Twombly*, 550 U.S. 544, 555 (2007). Although Rule 8 does not require detailed factual
9 allegations, it demands “more than labels and conclusions” or a “formulaic recitation of the
10 elements of a cause of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Papasan v.*
11 *Allain*, 478 U.S. 265, 286 (1986)). The court must accept as true all well-pled factual allegations
12 contained in the complaint, but the same requirement does not apply to legal conclusions. *Iqbal*,
13 556 U.S. at 679. Mere recitals of the elements of a cause of action, supported only by conclusory
14 allegations, do not suffice. *Id.* at 678. Where the claims in the complaint have not crossed the
15 line from conceivable to plausible, the complaint should be dismissed. *Twombly*, 550 U.S. at 570.
16 Allegations of a *pro se* complaint are held to less stringent standards than formal pleadings
17 drafted by lawyers. *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (finding that liberal
18 construction of *pro se* pleadings is required after *Twombly* and *Iqbal*).

19 Federal courts are courts of limited jurisdiction and possess only that power authorized by
20 the Constitution and statute. *See Rasul v. Bush*, 542 U.S. 466, 489 (2004). Under 28 U.S.C.
21 § 1331, federal courts have original jurisdiction over “all civil actions arising under the
22 Constitution, laws, or treaties of the United States.” Cases “arise under” federal law either when
23 federal law creates the cause of action or where the vindication of a right under state law
24 necessarily turns on the construction of federal law. *Republican Party of Guam v. Gutierrez*, 277
25 F.3d 1086, 1088-89 (9th Cir. 2002). Whether federal-question jurisdiction exists is based on the
26 “well-pleaded complaint rule,” which provides that “federal jurisdiction exists only when a
27 federal question is presented on the face of the plaintiff’s properly pleaded complaint.”
28 *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987). Under 28 U.S.C. § 1332(a), federal

1 district courts have original jurisdiction over civil actions in diversity cases “where the matter in
2 controversy exceeds the sum or value of \$75,000” and where the matter is between “citizens of
3 different states.” Generally speaking, diversity jurisdiction exists only where there is “complete
4 diversity” among the parties; each of the plaintiffs must be a citizen of a different state than each
5 of the defendants. *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68 (1996).

6 **III. Screening the complaint.**

7 Plaintiff sues Bank of America; Bank of America Bank Manager Ashlee Andrews; the Las
8 Vegas Metropolitan Police Department (“LVMPD”); and LVMPD Officer C. LaRose. (ECF No.
9 1 at 2). He alleges that he arrived at Bank of America on August 2, 2023, to deposit a cashier’s
10 check. (*Id.*). However, Andrews called LVMPD and made “false allegations,” which led to
11 Officer LaRose arriving on the scene and injuring Plaintiff while arresting him. (*Id.*). Plaintiff
12 claims to have then spent twenty days in jail until he obtained bail. (*Id.* at 3). He claims to have
13 lost his car, his home, and \$30,000 for his bail as a result of his detention. (*Id.*). On August 23,
14 2023, Plaintiff went back to the Bank of America to retrieve his cashier’s check, but Andrews
15 informed him that “the check went back to [Bank of America].” (*Id.* at 4). Plaintiff seeks
16 damages and injunctive relief in the form of the Court ordering Bank of America to reinstate his
17 banking privileges. (*Id.* at 6).

18 **A. First cause of action.**

19 Plaintiff brings his first cause of action under the Fourth Amendment and against Bank of
20 America, alleging that the company is liable for the actions of Andrews under the doctrine of
21 *respondeat superior* and Nevada Revised Statute (“NRS”) 41.130. (*Id.* at 3). Plaintiff asserts that
22 Bank of America is responsible for Andrews’ “false allegations” and, as a result, for Plaintiff’s
23 subsequent arrest, injuries, and loss of property while in jail. Plaintiff also alleges that Bank of
24 America unlawfully retained his cashier’s check.

25 Plaintiff’s claim fails for three reasons. First, because he has not alleged that Bank of
26 America is a state actor and Bank of America is thus not liable under 42 U.S.C. § 1983. Second,
27 because there is no *respondeat superior* liability under § 1983. And third, because this Court
28

1 lacks jurisdiction to determine Plaintiff's claims arising under NRS 41.130 and any state law
2 claims he brings related to the bank's retention of his cashier's check.

3 First, Plaintiff's Fourth Amendment claim arises under 42 U.S.C. § 1983, which provides
4 a mechanism to enforce rights secured by the Constitution and laws of the United States. *See*
5 *Gonzaga University v. Doe*, 536 U.S. 273, 285 (2002). But to state a claim under § 1983, the
6 plaintiff must allege a violation of his constitutional rights by a defendant acting under color of
7 state law. *Gritchen v. Collier*, 254 F.3d 807, 812 (9th Cir. 2001). A defendant acts under color of
8 state law if the defendant "exercises power possessed by virtue of state law and made possible
9 only because the wrongdoer is clothed with the authority of state law." *Perez-Morciglio v. Las*
10 *Vegas Metro. Police Dep't*, 820 F. Supp. 2d 1100, 1106 (D. Nev. 2011) (quoting *West v. Atkins*,
11 487 U.S. 42, 49 (1988) (alterations omitted)). Here, Plaintiff has not alleged that Bank of
12 America was acting under state law when it employed Andrews. Plaintiff thus fails to state a
13 claim under 42 U.S.C. § 1983.

14 Second, even if Plaintiff did allege that Bank of America was a state actor, there is no
15 *respondeat superior* liability under 42 U.S.C. § 1983. *See Taylor v. List*, 880 F.2d 1040, 1045
16 (9th Cir. 1989). To hold a wrongdoer liable for damages, the wrongdoer must personally cause
17 the violation. *Leer v. Murphy*, 844 F.2d 628, 632-33 (9th Cir. 1988). Here, Plaintiff does not
18 allege that Bank of America directly took any actions—other than employing Andrews—that
19 caused his damages. Plaintiff thus fails to state a claim under 42 U.S.C. § 1983.

20 Third, as outlined above and in the remainder of this order, Plaintiff fails to allege any
21 claims arising under the Constitution or federal law. As a result, this Court lacks jurisdiction to
22 decide his claim for *respondeat superior* under NRS 41.130 and any state law claim related to the
23 bank's retention of his cashier's check.¹ This is because, federal courts—like this Court—must
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25 ¹ Plaintiff does not explicitly reference any state law claims related to his cashier's check, but he
26 could potentially allege a state law claim for conversion. The elements of conversion are: (1) the
27 defendant committed a distinct act of dominion wrongfully exerted over the plaintiff's personal
28 property; (2) the act was in denial of, or inconsistent with, the plaintiff's title or rights therein; and
(3) the act was in derogation, exclusion, or defiance of the plaintiff's title or rights in the personal
property. *Evans v. Dean Witter Reynolds, Inc.*, 116 Nev. 598, 606, 5 P.3d 1043, 1048 (2000).

1 have jurisdiction to hear a case. Generally speaking, there are two types of jurisdiction a federal
 2 court may have over a civil case: (1) federal question jurisdiction; and (2) diversity jurisdiction.
 3 *See* 28 U.S.C. §§ 1331, 1332. The first type of jurisdiction—federal question jurisdiction—exists
 4 when a civil action arises “under the Constitution, laws, or treaties of the United States.” *See* 28
 5 U.S.C. § 1331.² This is the type of jurisdiction that Plaintiff invokes in his complaint. But
 6 because Plaintiff does not allege any colorable federal claims, he does not properly invoke this
 7 type of jurisdiction. The second type of jurisdiction is known as “diversity jurisdiction” and
 8 exists “where the matter in controversy exceeds the sum or value of \$75,000” and where the
 9 matter is between “citizens of different states.” *See* 28 U.S.C. § 1332(a). But Plaintiff provides
 10 no information about any Defendant’s citizenship. So, although Plaintiff alleges \$30 million in
 11 damages, he does not allege that he is a citizen of a different state from each of the Defendants.
 12 As a result, the Court lacks supplemental jurisdiction³ over Plaintiff’s state law claims. The
 13 Court thus dismisses Plaintiff’s first cause of action without prejudice and with leave to amend.

14 ***B. Second cause of action.***

15 Plaintiff also brings his second cause of action under the Fourth Amendment against
 16 Andrews for her “false accusations” leading up to Plaintiff’s arrest, his injuries, the loss of his
 17 cashier’s check, and the loss of his property. Plaintiff asserts that Andrews violated her duty to
 18 follow the Constitution. However, Plaintiff’s claims against Andrews fail because he does not
 19 allege that she was a state actor. As outlined above, to be liable under 42 U.S.C. § 1983, a
 20 plaintiff must allege that the defendant was acting under color of state law. And here, he does
 21 not.

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 23 However, even if the Court were to liberally construe Plaintiff’s complaint as bringing a
 24 conversion claim, the Court would lack the ability to exercise supplemental jurisdiction over it.

25 ² As outlined above, cases “arise under” federal law either when federal law creates the cause of
 26 action or where the vindication of a right under state law necessarily turns on the construction of
 27 federal law. *Republican Party of Guam v. Gutierrez*, 277 F.3d 1086, 1088-89 (9th Cir. 2002).

28 ³ Under 28 U.S.C. § 1367(a), if a Court has diversity or federal question jurisdiction over a case,
 the Court may exercise supplemental jurisdiction “over all other claims that are so related to
 claims in the action within such original jurisdiction that they form part of the same case or
 controversy under Article III of the United States Constitution.”

1 Additionally, Plaintiff does not provide sufficient facts about what happened for this Court
2 to liberally construe a colorable claim. Plaintiff simply alleges that Andrews called the police on
3 him and made certain “false allegations” without explaining the context for her call or even what
4 she said. Other than stating that he arrived at the Bank of America, he does not explain what
5 prompted Andrews to call the police or why her allegations were false. The Court thus dismisses
6 Plaintiff’s second cause of action without prejudice.

7 **C. Third cause of action.**

8 Plaintiff brings his third cause of action under the Eighth Amendment against Officer
9 LaRose and the LVMPD. He alleges that LVMPD is liable for Officer LaRose’s actions under
10 the doctrine of *respondeat superior* and NRS 41.130. Plaintiff asserts that, although he had
11 legitimate business at Bank of America, Officer LaRose assaulted him, causing him physical and
12 mental injury. Plaintiff claims that Officer LaRose hit him multiple times, landing blows to
13 Plaintiff’s head, and leaving Plaintiff without hearing in his left ear and with blood pouring from
14 his right eyebrow.

15 Plaintiff’s claim fails for three reasons. First, as outlined above, there is no *respondeat*
16 *superior* liability under 28 U.S.C. § 1983 and Plaintiff has not alleged that LVMPD had a policy
17 or custom that resulted in the Constitutional violation Plaintiff alleges. Second, and again, to the
18 extent Plaintiff brings his *respondeat superior* claim under NRS 41.130, the Court lacks
19 jurisdiction to decide this state law claim. Third, Plaintiff’s claims more appropriately arise under
20 the Fourth Amendment as false arrest and excessive force claims. But even if the Court liberally
21 construed Plaintiff’s complaint to bring those claims, Plaintiff did not provide sufficient factual
22 detail for those claims to be colorable.

23 First, as discussed above, there is no *respondeat superior* liability under 28 U.S.C. § 1983.
24 And while LVMPD may be liable under 42 U.S.C. § 1983 if its policies were the “moving force
25 behind the constitutional violation,” Plaintiff has not alleged that Officer LaRose was following
26 any LVMPD policy in arresting him. *See City of Canton, Ohio v. Harris*, 489 U.S. 378, 389
27 (1989) (internal citations omitted) (cleaned up). So, Plaintiff’s *respondeat superior* claim under
28 28 U.S.C. § 1983 fails.

1 Second, Plaintiff cannot bring his claims under NRS 41.130 here in federal court because
2 he has not alleged a basis for this Court’s diversity or federal question jurisdiction over this case.
3 As a result, the Court cannot exercise supplemental jurisdiction over Plaintiff’s state law claims.
4 Plaintiff’s *respondeat superior* claim against LVMPD under NRS 41.130 also fails.

5 Third, Plaintiff’s claims against Officer LaRose more appropriately arise under the Fourth
6 Amendment, and not the Eighth Amendment. But even if the Court construed Plaintiff as raising
7 Fourth Amendment claims, they would fail. The Eighth Amendment prohibits cruel and unusual
8 punishment, but only applies to protect convicted detainees, not pretrial detainees. *See Frost v.*
9 *Agos*, 152 F.3d 1124, 1128 (9th Cir. 1998) (explaining that “[c]laims by pretrial detainees are
10 analyzed under the Fourteenth Amendment Due Process Clause, rather than the Eighth
11 Amendment.”). Plaintiff allegations stem from his arrest, not from any incidents post-conviction,
12 so his claims do not arise under the Eighth Amendment.

13 Plaintiff’s claims appear to arise under the Fourth Amendment—which guarantees
14 security from unreasonable searches and seizures—as claims for false arrest and excessive force.
15 *See Caballero v. City of Concord*, 956 F.2d 204, 206 (9th Cir. 1992). To allege a claim for false
16 arrest under the Fourth Amendment, a Plaintiff must allege that officers arrested him without
17 probable cause or justification. *Yousefian v. City of Glendale*, 779 F.3d 1010, 1014 (9th Cir.
18 2015). However, Plaintiff does not allege sufficient factual detail about his arrest for the Court to
19 conclude that it was without probable cause. Although Plaintiff alleges that Andrews made a
20 false allegation when calling the police, he does not allege what she said, why it was false, or why
21 Officer LaRose should have known that it was false when arresting Plaintiff. So, Plaintiff does
22 not allege a colorable claim for false arrest under the Fourth Amendment.

23 To allege a claim for excessive force under the Fourth Amendment, a Plaintiff must allege
24 that the force an officer used was unreasonable under the circumstances. *See Smith v. City of*
25 *Hemet*, 394 F.3d 689, 700 (9th Cir. 2005) (explaining that “[a]ll claims that law enforcement
26 officers have used excessive force—deadly or otherwise—in the course of an arrest must be
27 analyzed under the Fourth Amendment and its ‘reasonableness’ standard.”) (citing *Graham v.*
28 *Connor*, 490 U.S. 386, 395 (1989)). The reasonableness analysis requires balancing the “nature

1 and quality of the intrusion” on a person’s liberty with the “countervailing governmental interests
2 at stake” to determine whether the use of force was objectively reasonable under the
3 circumstances. *Id.* Here, again, Plaintiff does not provide enough factual detail for the Court to
4 determine whether Officer LaRose’s actions were reasonable. So, he does not allege a colorable
5 claim for excessive force under the Fourth Amendment. Because Plaintiff has not alleged a
6 colorable claim in his third cause of action, the Court dismisses it without prejudice and with
7 leave to amend.

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9 **IT IS THEREFORE ORDERED** that Plaintiff’s application to proceed *in forma*
10 *pauperis* (ECF No. 15) is **granted**. Plaintiff will **not** be required to pay an initial installment fee.
11 Nevertheless, the full filing fee will still be due, pursuant to 28 U.S.C. § 1915, as amended by the
12 Prison Litigation Reform Act. The movant herein is permitted to maintain this action to
13 conclusion without the necessity of prepayment of fees or costs or the giving of security therefor.

14 **IT IS FURTHER ORDERED** that, pursuant to 28 U.S.C. § 1915, as amended by the
15 Prison Litigation Reform Act, the Nevada Department of Corrections will forward payments from
16 the account of **Justin Lynn Victory, Inmate No. 1278198**, to the Clerk of the United States
17 District Court, District of Nevada, 20% of the preceding month’s deposits (in months that the
18 account exceeds \$10.00) until the full \$350 filing fee has been paid for this action. The Clerk of
19 Court is kindly directed to send a copy of this order to the Finance Division of the Clerk’s Office.
20 The Clerk of Court is also kindly directed to send a copy of this order to the attention of **Chief of**
21 **Inmate Services for the Nevada Department of Corrections** at P.O. Box 7011, Carson City,
22 NV 89702.

23 **IT IS FURTHER ORDERED** that, even if this action is dismissed, or is otherwise
24 unsuccessful, the full filing fee will still be due, pursuant to 28 U.S.C. § 1915, as amended by the
25 Prison Litigation Reform Act.

26 **IT IS FURTHER ORDERED** that the Clerk of Court is kindly directed to file Plaintiff’s
27 complaint (ECF No. 1) on the docket but shall not issue summons.
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1 **IT IS FURTHER ORDERED** that the complaint (ECF No. 1) is **dismissed without**
2 **prejudice** for failure to state a claim upon which relief can be granted, with leave to amend.
3 Plaintiff will have until **November 14, 2024**, to file an amended complaint if the noted
4 deficiencies can be corrected. If Plaintiff chooses to amend the complaint, Plaintiff is informed
5 that the Court cannot refer to a prior pleading (i.e., the original complaint) to make the amended
6 complaint complete. This is because, generally, an amended complaint supersedes the original
7 complaint. Local Rule 15-1(a) requires that an amended complaint be complete without reference
8 to any prior pleading. Once a plaintiff files an amended complaint, the original complaint no
9 longer serves any function in the case. Therefore, in an amended complaint, as in an original
10 complaint, each claim and the involvement of each Defendant must be sufficiently alleged.
11 **Failure to comply with this order will result in the recommended dismissal of this case.**

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13 DATED: October 15, 2024

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17 DANIEL J. ALBREGTS
18 UNITED STATES MAGISTRATE JUDGE
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